

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
INDIANA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT,)	
)	
Plaintiff-Intervenor,)	Civil Action No.
)	
HAMMOND DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT,)	Judge
)	
Plaintiff-Intervenor,)	CONSENT DECREE
)	
v.)	
)	
JUPITER ALUMINUM CORPORATION,)	
)	
Defendant.)	
)	

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE
II.	APPLICABILITY
III.	OBJECTIVES
IV.	DEFINITIONS
V.	REMEDIAL MEASURES
VI.	CIVIL PENALTY
VII.	REPORTING REQUIREMENTS
VIII.	STIPULATED PENALTIES
IX.	FORCE MAJEURE
X.	DISPUTE RESOLUTION
XI.	INFORMATION COLLECTION AND RETENTION
XII.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS
XIII.	COSTS
XIV.	NOTICES
XV.	EFFECTIVE DATE
XVI.	RETENTION OF JURISDICTION
XVII.	MODIFICATION
XVIII.	TERMINATION
XIX.	PUBLIC PARTICIPATION
XX.	SIGNATORIES/SERVICE
XXI.	INTEGRATION
XXII.	FINAL JUDGMENT

XXIII. APPENDICES

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America (“United States”), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a Complaint on _____, 2007, seeking injunctive relief and civil penalties pursuant to Section 113(b) of the Clean Air Act (“the CAA” or “the Act”), 42 U.S.C. § 7413(b), naming as defendant Jupiter Aluminum Corporation;

WHEREAS, Plaintiff-Intervenors, the State of Indiana, on behalf of the Indiana Department of Environmental Management (“IDEM”), and the City of Hammond, on behalf of the Hammond Department of Environmental Protection (“HDEM”), which are the State and local air pollution control agencies that monitor Defendant’s compliance with the CAA and corresponding State and local statutes and regulations, filed a Motion to Intervene and a Complaint in Intervention, on _____, 2007, against Defendant;

WHEREAS, Defendant owns and operates a Secondary Aluminum Production Facility (“SAPF”) which is part of Defendant’s larger aluminum production facility located at 1745 165th Street, in Hammond, Indiana, and is subject to the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for secondary aluminum processing, codified at 40 C.F.R. Part 63, Subpart RRR;

WHEREAS, on November 24, 2006, a fire occurred at Defendant’s aluminum production facility in Hammond, Indiana which resulted in the shut down of the SAPF and other parts of the Defendant’s larger facility, and furnace operations at Defendant’s SAPF have not yet resumed;

WHEREAS, the United States has alleged in its Complaint that commencing in March 2003 and continuing through the date of the fire, Defendant consistently violated Section 112 of

the Act, and the applicable requirements of 40 C.F.R. Part 63, Subpart RRR including but not limited to requirements set forth in Subsections 63.9(b), 63.1505(i), 63.1506(c), 63.1510(b),(e),(f),(i),(j) and (p), 63.1511(b), 63.1516(a) & (b), and 63.1517(b) of 40 C.F.R.;

WHEREAS, in a “Finding of Violation” and an Order issued by IDEM on May 4, 2007, involving the Defendant’s Hammond, Indiana aluminum production facility (including but not limited to its SAPF), Defendant was found to have violated other State air pollution control regulations at its SAPF, and was ordered not to begin furnace operations at its SAPF until it demonstrates to EPA that it is in compliance with 40 C.F.R. Part 63, Subpart RRR;

WHEREAS, IDEM and HDEM have alleged in their Complaint in Intervention that Defendant has violated **and continues to violate** (ask Betsy) Section 112 of the Act, and the applicable requirements of 40 C.F.R. Part 63, Subpart RRR including but not limited to requirements set forth in Sections 63.9(b), 63.1505(i), 63.1506(c), 63.1510(b),(e),(f),(i), (j) and (p), 63.1511(b), 63.1516(a) & (b), and 63.1517(b) of 40 C.F.R., and the equivalent Indiana regulations;

WHEREAS, on _____, 2007, the Court granted IDEM’s and HDEM’s Motion to Intervene, and consolidated their case with the United States’ case (C.A. No. _____);

WHEREAS, the Parties agree, and the Court finds, that settlement of the claims alleged in the Complaints without further litigation or trial of any issues is fair, reasonable and in the public interest, and that the entry of this Consent Decree is the most appropriate way of resolving the claims alleged in the Complaints; and

WHEREAS, Defendant Jupiter Aluminum does not admit any liability to the United States, the State of Indiana, and/or to the City of Hammond;

NOW THEREFORE, without any admission of any issue of fact or law, except as

provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355(a), and over the Parties. Venue lies in this District pursuant to 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1391(b) and 1395 (a) because the violations alleged in the Complaints are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaints state claims upon which relief may be granted pursuant to Section 113 of the CAA.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State Parties, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer to EPA Region 5 and the State Parties, the United States Attorney for the Northern District of Indiana, Hammond Division, and the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Any

attempt to transfer ownership or operation of Jupiter's Hammond, Indiana Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

7. The express purpose of the Parties in entering into this Consent Decree is to bring the Defendant into compliance with 40 C.F.R. Part 63, Subpart RRR, the National Emission Standards for Hazardous Air Pollutant (NESHAP) for secondary aluminum production facilities (hereinafter "Subpart RRR"), and to assist in Defendant's maintaining compliance with Subpart RRR.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or Subpart RRR shall have the meanings assigned to them in the Act or Subpart RRR, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Article" shall mean a subsection of Section V (Remedial Measures) of this Consent Decree;

b. "Complaint" shall mean the complaint filed by the United States, and the Complaints in Intervention filed by the State Parties;

c. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto, but in the event of any conflict between the text of this Decree and any Appendix, the text of this Decree shall control;

d. "Date of Lodging" shall mean the date that the United States Department of Justice files this Consent Decree with the Court, along with a Notice of Lodging. The "Date of Lodging" occurs prior to the public notice and comment period.

e. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next business day;

f. "Defendant" shall mean Jupiter Aluminum Corporation;

g. "Effective Date" shall mean the date upon which this Consent Decree is entered by the Court.

h. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

i. "Facility" shall mean Jupiter's secondary aluminum processing plant located in Hammond, Indiana;

j. "HDEM" shall mean the Hammond Department of Environmental Management;

k. "IDEM" shall mean the Indiana Department of Environmental Management;

l. "Malfunction" shall mean, consistent with 40 C.F.R. § 60.2, any sudden,

infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner, but shall not include failures that are caused in part by poor maintenance or careless operation;

- m. "Other Than Clean Charge" shall mean any scrap aluminum that does not meet the definition of "clean charge" in 40 C.F.R. § 63.1503.
- n. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral in a Section other this Decree other than Section V (Remedial Measures);
- o. "Parties" shall mean the United States, the State of Indiana, the City of Hammond, Indiana, and Defendant;
- p. "Section" shall mean a portion of this Decree identified by a roman numeral;
- q. "Shutdown" shall mean the cessation of operation of a Group 1, Group 2 or Dross Only Furnace, as defined in 40 C.F.R. § 63.1503, for any reason. Shutdown begins at the time when charging of aluminum or dross to the furnace ceases;
- r. "Startup" shall mean the 24-hour period beginning when (Proposal: "Other Than Clean Charge") aluminum or dross is charged to a Group 1, Group 2, or Dross Only Furnace;
- s. "State Parties" shall mean the State of Indiana and the City of Hammond, Indiana;
- t. "Ton" or "tons" shall mean short ton or tons;
- u. "United States" shall mean the United States of America, acting on behalf of

EPA.

V. REMEDIAL MEASURES

9. Commencing on the Date of Entry (**Proposal: Date of Lodging**) of this Consent Decree, and provided that Defendant has received written approval from EPA of its revised Operation, Maintenance and Management Plan (“OM&M Plan”), Defendant may resume furnace operations (*i.e.* may begin charging (**Proposal: Other Than Clean Charge**) aluminum into furnaces), subject to the requirements of this Section (Remedial Measures), the purpose of which is to bring Defendant into compliance with 40 C.F.R. Part 63, Subpart RRR:

Article One- Furnaces 2 and 6 Capture and Control Requirements

A. ~~Initial~~ Demonstrations of Capture Efficiency for Group 1 Furnaces 2 & 6

Within one week of Startup (**running w/other than clean scrap**), Defendant shall demonstrate 100% capture efficiency at the Furnace 2 and Furnace 6 charge wells over a complete operating cycle including during charging, fluxing and drossing operations. During the capture demonstration, Defendant shall charge Used Beverage Cans (“UBCs”) and “Other Than Clean Scrap” at the maximum charge rates established in Defendant’s then current, EPA-approved Operation, Maintenance and Management Plan (“OM&M Plan”) (**Proposal: Specific Maximum Rates to be provided by Jupiter**). Also, during the capture demonstration Defendant shall use the maximum amount of flux as established in Defendant’s then current, EPA-approved OM&M Plan. 100% capture efficiency shall mean that all EPA, IDEM and/or HDEM inspectors present during the demonstration observe no visible emissions escaping from the hood or emission source throughout a complete operating cycle. All capture demonstrations shall be conducted with the dross door **closed during charging and fluxing, and only open during drossing**.

~~open~~. During the entire capture demonstration, Defendant shall take three measurements of the volumetric flow rate of gas at the charge well hood, (Proposal: DOJ check- subject to safety concerns and technical feasibility), in accordance with EPA Methods 1 and 2 (40 C.F.R. Part 60, Appendix A), and shall obtain the average volumetric flow rate from those measurements. Defendant shall perform a second capture demonstration using clean charge only under the same parameters set forth above.

B. Defendant's Option in the Event of a Dispute over an Observation

Should Defendant dispute a visual observation of an EPA, IDEM and/or an HDEM inspector, Defendant may, at its own expense, install a long-path opacity monitor. For testing of charging and fluxing operations, the monitor shall be positioned immediately outside the opening on the charge well hood. For testing of drossing operations, the monitor shall be positioned immediately outside of the drossing door. Prior to any capture demonstration in which the opacity monitor is used, Defendant shall demonstrate to the EPA, IDEM and/or HDEM inspectors present during the inspection that the opacity monitor has been properly calibrated and is in good working order, in accordance with manufacturer's specifications that shall be made available to the inspectors for review at least one business day in advance of the demonstration. A reading of 5% or less above background by the opacity monitor shall be considered acceptable capture.

C. Defendant's Duties Following an Unsuccessful Initial Demonstration

1. Two Week Period to Adjust Capture Equipment and/or Charge Rates Following Unsuccessful Initial Demonstration

Following an unsuccessful initial demonstration (and no other demonstrations) at Furnace 2 and/or 6 (See **Article One, A**, above), Defendant may make two additional attempts during the

two week period following the unsuccessful initial demonstration to make a successful demonstration in accordance with **Article One, A** and/or **B**, by adjusting charging rates and/or capture equipment. Prior to scheduling the second or third demonstration, Defendant shall provide one week's prior notice to the EPA, IDEM and HDEM inspectors present during the unsuccessful initial demonstration of the date for the second or third demonstration.

2. Defendant's Duty to Maintain Operating Conditions Occurring at the Time of a Successful ~~Initial~~ Demonstration

If Defendant makes a successful demonstration of 100% capture in accordance with **Article One, A, B, or C, 1**, above, by reducing charging rates and/or adjusting capture equipment, Defendant shall document the conditions under which the demonstration was successful and, within one week following the demonstration, shall ~~request~~ **submit** a revised OM&M Plan to EPA and HDEM for review and approval which reestablishes the maximum charge rate and other operating conditions **(Proposal: “specifically, the dross door is only open during drossing, and the baghouses are operated in accordance with the Title V permit and within 95 percent of the average volumetric flow rate measured during the initial demonstration, and standard operating procedures are being followed (WHAT’S THAT MEAN?) ”** to be **consistent with *** identical to** the rate and conditions that occurred during the successful demonstration. Further, simultaneously with submitting the revised OM&M Plan, Defendant shall submit to EPA, IDEM and HDEM, in accordance with Section XIV (Notices), a certification signed by the same type of corporate official required to sign Quarterly Reports under Section VII (Reporting) of this Consent Decree (See Paragraph **17 46**), which states:

I certify under penalty of law that Jupiter Aluminum Corporation at no time shall exceed the maximum charge rates that occurred during the successful capture demonstration(s) for Furnace 2

and/or Furnace 6 performed under **Article One, C**, of the Consent Decree entered into with the United States in United States of America, et al. v. Jupiter Aluminum Corp., C.A. No.07-_____, and that all times it shall maintain, at a minimum, the capture equipment (~~at~~ **Proposal: “consistent with”**) the conditions that were present during the successful capture demonstration(s).

An exceedance of the maximum charge rate, and/or a failure to maintain capture equipment in accordance with the approved, revised OM&M Plan required in this subsection, shall be subject to stipulated penalties under Section VII of this Consent Decree, and/or may be the subject of a contempt motion.

3. Cessation of Furnace Operations and Modification of Capture and Control Equipment in Accordance with an Approved Plan

a. If Defendant does not complete a successful capture demonstration in accordance with **Article One, A, B, or C. 1**, Defendant shall cease charging of the furnace or furnaces in question,.

b. **Defendant** shall ~~thereafter~~ submit a plan to EPA and IDEM for modifications to its capture and collection system aimed at achieving 100% capture throughout a complete operating cycle, while charging, fluxing and drossing, (with the dross door open). Once EPA and HDEM provide written approval of the proposed modifications from EPA and HDEM, Defendant shall complete the modifications as proposed, and shall notify EPA and HDEM in writing when such modifications are completed. Upon confirmation by EPA and/or HDEM that such modifications have been completed, Jupiter shall have an additional two week period following receipt of written confirmation to make a demonstration of 100% capture efficiency in accordance with the procedures set forth in **Article One, A, B, and C. 1**, above.

D. Corrective Actions Required in Event of Excess Fugitive Emissions Subsequent to Successful Initial Demonstration under Article One, A.

Following a successful demonstration of capture efficiency pursuant to Article One, A, if the Defendant observes (or if any of the Plaintiffs to this Consent Decree, or the IMC observe and notify Defendant of an occurrence of) a visible emission escaping from the hood, charge well, dross door, or furnace door of any furnace or associated capture system, Defendant shall accrue a stipulated penalty in accordance with Paragraph ____ of Section VIII (Stipulated Penalties). Additionally, Defendant shall take the following steps:

1. immediately stop charging “Other Than Clean Charge” to that furnace, and, if observed by the Defendant or the IMC, notify EPA and HDEM within 12 (24) hours of the occurrence;
2. immediately perform a “root cause analysis ” in accordance with **Article Nine**, and take corrective actions determined necessary; and
3. submit a root cause analysis report for review to USEPA and HDEM within one week of the occurrence;
4. Further, following the submission of the “root cause analysis report,” Defendant shall not resume charging “Other Than Clean Charge” until EPA or HDEM notifies Defendant that it is satisfied that the corrective actions already taken have been sufficient to address the problem, or whether a repeat capture demonstration must be completed pursuant to Article One, A. If EPA or HDEM so notify Defendant that a repeat capture demonstration is required, Defendant shall promptly schedule a time with EPA and/or HDEM for such a demonstration, and shall perform the demonstration in accordance with Article One, A. The decision whether to require a repeat capture demonstration shall not be subject to Dispute

Resolution under Section ____ of this Decree.

D. Control of Emissions from the Hearths of Furnaces 2 and 6, and Molten Metal Levels

1. Unless and until Defendant makes a successful demonstration of 100% capture at the Furnace 2 hearth and/or Furnace 6 hearth, Defendant shall be prohibited from charging “Other Than Clean Charge” to the Furnace 2 hearth and/or the Furnace 6 hearth. Should Defendant desire to make such a compliance demonstration at the Furnace 2 hearth and/or the Furnace 6 hearth, it shall so notify EPA, IDEM and HDEM, and the same process as set forth in **Article One, A and B** shall be followed, except that the long path opacity monitor shall be positioned immediately adjacent to the hearth. or if the level of molten metal falls below the top of the passage between the sidewall and the hearth, Defendant shall immediately notify EPA and/ HDEM of such event(s), and shall be required to demonstrate 100% capture efficiency at the furnace door and furnace flue hood while charging scrap to hearths at the maximum rate.

2. If Defendant fails to demonstrate 100% capture at the Furnace 2 and/or Furnace 6 hearth, and Defendant still desires to charge “Other Than Clean Charge” to such hearths, Defendant may propose a modification to its capture and collection system (such as hood extensions over the hearth door) and following receipt of EPA and HDEM approval, may implement such a plan and retest at the hearth. Should Defendant successfully demonstrate 100% capture efficiency following such modification, it shall be allowed to charge “Other Than Clean Charge” to the hearth(s) in question.

E. Defendant’s Responsibility to Achieve Compliance with Subpart RRR by

Adequately Controlling Fugitive Emissions from Furnaces 2 and 6.

1. The Parties anticipate that any redesign of the capture and control system for Furnaces 2 and/or 6 under this Consent Decree shall meet or exceed the design standards set forth in Appendix A. It remains, at all times, Defendant's responsibility to achieve and maintain compliance with the requirements of Subpart RRR.

2. If at any time, **Defendant, (?)** EPA, IDEM, HDEM and/or the IMC observe emissions escaping from the Furnace 2 or the Furnace 6 ~~charge wells~~, **or observe such emissions recorded on a recording device**, Defendant shall be subject to the requirements of **Article One, C**, just as if Defendant had failed the initial capture demonstration, and shall be subject to stipulated penalties pursuant to Section VIII of this Decree, until a successful capture demonstration is performed for the furnace in question.

(30 second exemption issue here ??)

Article Two- Furnace 4 Capture and Control Requirements

A. Defendant shall either dismantle Furnace 4 and permanently remove it from service, or shall install and operate the following capture and control equipment prior to startup:

1. The Defendant shall design and install a system to capture and collect emissions from the Furnace 4 flue and door which meets the engineering standards for minimum exhaust rates as published in chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice," 23rd edition as published by the American Conference of Governmental Industrial Hygienists; Vent captured emissions through a closed system, except that dilution air may be added to emission streams for the purpose of controlling temperature at the inlet to a fabric filter;

2. Install an appropriately sized and designed fabric filter baghouse and bag leak

detection system capable of meeting the emission standards for D/F, HCl and PM set forth in Subpart RRR;

3. Once the baghouse and leak detection system are installed, Defendant shall notify EPA, IDEM and HDEM, and shall thereafter conduct a Performance Test on the system, in accordance with **Article Five, A. 2**, below, and

4. Defendant, within one week of completing construction on the Furnace 4 capture system, shall propose and submit to EPA and HDEM a modification to its OM&M Plan to address the new capture system for Furnace 4, and shall operate the new capture systems in accordance with the approved modification to the OM&M Plan.

Article Three- General Provisions Applicable to All Furnaces

Until such time as Defendant successfully demonstrates 100% capture at Furnaces 2, 6 and 4 (if not dismantled and taken out of operation), Defendant shall notify the EPA and HDEM, in writing, at least one week in advance as to intended startup or demonstration dates. Furnace startup and capture demonstrations shall be restricted to normal business hours, unless EPA, HDEM and IDEM agree otherwise.

Article Four- Weighing the Feed/Charge at Group 1 and Dross Only Furnaces, Recording Information about Loads Charged, and Calibrating the Weighing Device

(Tony- To propose language, US not committing at this time)

A. Following the Date of Lodging of this Consent Decree, prior to commencing any charging operations to a Group 1 furnace or a dross only furnace at its Facility, Defendant shall install a scale [or feed hopper equipped with load cells] at each such furnace capable of accurately measuring each charge to the furnace with ± 1 percent of the weight being measured. For Group 1 furnaces, Defendant shall weigh all scrap on the scale [or in the feed hopper] prior

to charging it, and shall separately weigh flux, prior to charging it. For dross only furnaces, the dross and flux may be weighed separately or together, prior to charging.

B. For each load of scrap, dross, or flux that Defendant charges to a Group 1 or dross only furnace, Defendant shall record the following information: the date, time, weight, the furnace to which the material was charged, whether the material was charged to the furnace hearth or the side well, and whether the material is scrap, dross, or flux. If the material being charged is scrap, Defendant shall also specify the type of scrap (clean charge, UBCs, other than clean charge, etc.).

C. The scale [or weighing mechanism for each feed hopper] shall be calibrated, at a minimum once per month, or more frequently, if recommended by the manufacturer.

Article Five- Performance Tests for Group 1 and Dross Only Furnaces

A. Schedule for Initial Performance Tests Following Resumption of Furnace Operations

1. Furnaces 2 & 6- Defendant shall conduct performance tests on Furnaces 2 and 6 within 3 months (Proposal: six months, or longer, if agreed to by EPA, after consultation with IDEM and HDEM) of successfully demonstrating 100% capture as described in **Article One, above.** Defendant shall also perform one three-hour performance test run using “clean charge” only to demonstrate compliance while using “clean charge.”
2. Furnace 4- Defendant shall either dismantle Furnace 4 and permanently remove it from operation within 30 days of the Effective Date, or, if Defendant decides to install pollution control equipment on it and resume operation of Furnace 4, in accordance with **Article Two**, above, Defendant shall have three months following the date it notifies EPA and HDEM in writing that it has commenced such operation, to conduct a

performance test on Furnace 4, and demonstrate compliance with the emission limits for Group 1 furnaces found at 40 C.F.R. § 63.1505(i).

3. Furnaces 7 and 8- Within three months (same as above in 1) of the Effective Date, Defendant shall conduct performance tests on Furnaces 7 and 8 (the “dross only furnaces”), and shall demonstrate compliance with the emission limit for “dross only” furnaces found at 40 C.F.R. § 63.1505(g). (Question: Is Furnace 8 going to be operated?) **

B. Annual Performance Tests for All Group 1 and Dross Only Furnaces

Following the year in which the “initial performance tests” are conducted pursuant to **Article Five, Part A**, above, by the end of each subsequent calendar year, and until this Consent Decree terminates, Defendant shall conduct annual performance tests for Furnaces 2, 6, 7, 8**, and 4 (if still in operation).

C. General Requirements for Performance Tests

1. Defendant shall conduct performance tests in accordance with 40 C.F.R. § 63.1511 and 63.1512, except that 40 C.F.R. § 63.1511(f) shall not apply.
2. Defendant shall conduct performance tests for each pollutant for which an emission standard has been established in 40 C.F.R. § 63.1505.
3. During the performance test Defendant shall obtain three measurements of the volumetric flow rate of the gas at the charge well hood in accordance with EPA Methods 1 and 2 (40 C.F.R. Part 60, Appendix), and shall calculate the average of the three measurements. For Furnaces 2 and 6, the average gas volumetric flow rate measured during the performance test must be greater than or

equal to the average volumetric flow rate measured during the capture demonstration required pursuant to **Article One (Proposal: “consistent with”)**.

4. Defendant shall submit to EPA and HDEM for review and approval a test protocol at least 60 days in advance of the test, and in accordance with Subpart RRR. Defendant shall not conduct any performance test until and unless it receives from EPA and IDEM approval of the test protocol. The protocol shall include, among other things, a lime addition procedure.

5. Further, within 45 days of completing each test, Defendant shall submit to EPA, IDEM and HDEM a test report containing the emissions measured during the test. The test report, among other things, shall verify that the lime addition procedure used during the test was, in fact, conducted in the protocol. Further, no later than 30 days after receiving comments from EPA and/or HDEM on deficiencies in the test report, Defendant shall revise the test report in accordance with the comments, and/or shall retest, if necessary, to address the deficiencies raised. Defendant shall supply to EPA, IDEM and HDEM any data, measurements and/or calculations requested, relating to the performance test report. EPA, after consultation with IDEM and HDEM, shall notify Jupiter in writing when it accepts Defendant’s Performance Test Report (or revised Performance Test Report).

D. Performance Test Results

1. For Furnaces 2, 6, and 4 (if still in operation), measured emissions shall not exceed the emission standards contained in 40 C.F.R. § 63.1505(i).

2. Should the measured **hydrochloric acid (HCl)** emission rate(s) exceed the

limitations contained in 40 C.F.R. § 63.1505(i) for those (that) pollutant(s), the Defendant shall cease operating the furnace in question until such time that a system for continuously feeding lime to the furnace's baghouse has been installed and the Defendant has demonstrated through another performance test that the HCl emission rate can be repeated.

3. Should the measured **Dioxin/Furan** and/or **Particulate Matter emission rate(s)** exceed the limitations contained in 40 C.F.R. § 63.1505(i), the Defendant shall cease charging "Other Than Clean Scrap," to the furnace, and shall submit a plan to EPA and HDEM for their review and approval, to ensure that the furnace can achieve and maintain compliance with the limitation that was exceeded. After the plan is approved and implemented, Defendant shall not resume charging "Other Than Clean Scrap" until another Performance Test confirms that the D/F and/or the PM limitation has been met.

4. Should the measured **PM emission rate** exceed the limitation contained in 40 C.F.R. § 63.1505(i), the Defendant shall cease charging "Other Than Clean Scrap," to the furnace, and shall submit a plan to EPA and HDEM for their review and approval, to ensure that the furnace can achieve and maintain compliance with the D/F limitation. After the plan is approved and implemented, Defendant shall not resume charging "Other Than Clean Scrap" until another Performance Test confirms that the D/F limitation has been met.

5. For Furnaces 7 and 8, emissions shall not exceed the emission standards contained in 40 C.F.R. § 63.1505(g). Should the measured PM emission rate exceed the limitation contained in 40 C.F.R. § 63.1505(g), the Defendant shall

cease operation of the offending furnace until such time as the furnace's baghouse has been repaired or replaced and a new performance test can be performed.

E. General Provisions Applicable When a Furnace Fails a Performance Test

Should any furnace fail to demonstrate compliance with the emission standard and a modification of the control system is required by this Decree, the Defendant shall repeat the performance test on the furnace in question within two weeks of returning the furnace to operation. Should the furnace in question fail the second performance test, the Defendant shall cease operation of the furnace in question upon receipt of the test results, **or shall utilize “clean charge” only in the furnace that failed the test provided that Defendant has demonstrated compliance with the capture requirements and performance test while using “clean charge.”** Defendant may submit a plan to bring the furnace in question into compliance with the emission limitations, however, no further operation of the furnace may occur without first obtaining EPA and HDEM approval of the plan.

F. Requirement to Submit a Notification of Compliance Status Report in Accordance with 40 C.F.R. § 63.1515(b).

No later than 30 days after receiving EPA's notice of acceptance of a Performance Test Report (or a revised Performance Test Report) for a particular furnace, Defendant shall submit to EPA, IDEM and HDEM, in accordance with Section XIV (Notices) of this Decree, a “Notification of Compliance Status Report,” in accordance with 40 C.F.R. § 63.1515(b). EPA, after consultation with IDEM and HDEM, shall approve, approve with comments, or disapprove the Notification of Compliance Status Report.

Article Six- Bag Leak Detection Systems for Fabric Filters

A. Defendant shall operate a bag leak detection system, capable of detecting PM

emissions at concentrations of 10 milligrams per actual cubic meter or less, for each exhaust stack of a fabric filter. Defendant shall also operate each bag leak detection system in accordance with the manufacturer's written specifications and recommendations, a copy of which it shall supply to EPA and HDEM within thirty days from the Effective Date of the Consent Decree.

B. ~~Installation, maintenance, calibration, and adjustment of the bag leak detection system shall be performed by the manufacturer's personnel, authorized subcontractors, or others not directly employed by the Defendant who are certified by the manufacturer as being trained in the proper maintenance of the bag leak detection system. Personnel directly employed by the Defendant may only install, maintain, calibrate or adjust the bag leak detection system if the Defendant obtains written confirmation from the manufacturer that it does not supply, train or subcontract outside personnel for such purposes, and Defendant sends EPA and HDEM a copy of such written confirmation.~~ Prior to Startup, the manufacturer shall inspect and certify that the bag leak detection systems are installed and calibrated to ensure accuracy of operational parameters. Subsequently every six months, the manufacturer shall reinspect and certify every bag leak detection system to ensure continued accuracy. In the event that the manufacturer determines that the system is inaccurate, Defendant shall promptly take corrective action to return the system to proper operation. Defendant shall provide a copy of these certifications as part of the Quarterly Report under Section ____ of the Decree. ** (Lisa- Add to Quarterly Reporting Section). Defendant's personnel who perform installation, maintenance and/or adjustment of the bag leak detection system shall ~~If the Defendant's personnel perform installation, maintenance, calibration or adjustment of the bag leak detection system, Defendant shall obtain all available training~~ from the manufacturer. ~~for such personnel and shall maintain~~

~~records of such training.~~

C. For each bag leak detection system, Defendant shall install and operate a device that automatically records the following information at no greater than 10 second intervals: date, time, baghouse number, furnace number, relative or absolute PM loading, alarm setpoint, alarm delay, alarm sensitivity, alarm status, and current alarm duration.

D. For each bag leak detection system, Defendant shall maintain a log sheet with the following information: date and time of each alarm, the cause of each alarm, the corrective action undertaken for each alarm, and the date and time when corrective action was initiated and completed. The Defendant shall also record any dates and times when the bag leak detection system was not in service or believed to be malfunctioning. Defendant shall also record dates and times when the bag leak detection system was calibrated, repaired or adjusted in any manner. For each record on the log sheet, Defendant shall record the full name and ~~title of telephone number of~~ the person entering the information on the sheet.

E. Defendant shall move visual and audible bag leak alarms to a location that is permanently staffed, on a 24 hour basis, and shall maintain such alarms at that location. Defendant shall make the staff at this location responsible for ~~responding to~~ ~~initiating corrective action~~ each alarm on each baghouse within one hour or less from the time the alarm began, and shall record all responses/corrective actions taken.

F. Defendant shall operate each baghouse servicing Furnaces 2, 6, 7, 8, and 4 (if still in operations) such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a calendar month.

G. The total downtime for each bag leak detection system during each calendar month shall be no more than five percent of the corresponding furnace's operating hours.

H. ~~When the bag leak detection system is not in operation,~~ Defendant shall have a certified visible emissions evaluator take ~~daily~~ visible emissions readings ~~once per daylight shift~~ on ~~each~~ the baghouse stack ~~on which the detection system is not operating.~~ ~~serving a Group 1 or dross only furnaces.~~ The readings shall be taken in accordance with 40 C.F.R. 60, Method 9. Records shall be maintained of the visible emissions readings and available to agency personnel upon request. The readings shall be taken while the furnace and baghouse are in operation. If a furnace does not operate during daylight hours on any day, the visible emissions evaluator can note this fact in lieu of taking the readings. The Defendant shall report any Method 9 readings at or over 10% to EPA and HDEM in the Quarterly Report required by Section VII of this Consent Decree. In reporting such readings, Defendant shall provide the stack in question, the percentage opacity observed, the date and the time of the observation.

Article Seven- Operation Maintenance and Management Plan (OM&M Plan) Approval

Within thirty days after the Effective Date of this Consent Decree, Defendant shall submit an OM&M Plan revision to EPA and HDEM for review and approval. All OM&M Plan revisions or amendments submitted after the Effective Date of this Consent Decree shall contain, at a minimum, the following information:

- A. A certification from the Defendant that Defendant shall operate Furnaces 7 and 8 as “dross only” furnaces;
- B. A certification from the Defendant that Defendant shall charge only “clean charge,” as defined in 40 C.F.R. § 63.1501, to Furnace 1;
- C. A startup, shutdown, and malfunction plan meeting the requirements of 40 C.F.R. § 63.1516(a);
- D. A lime addition monitoring procedure for each baghouse to which intermittent

lime addition will take place;

E. A timetable for demolition for any furnace which will no longer be operated;

F. For any furnace which will remain in operation, establish maximum feed/charge rates in tons per charge and tons per hour for the furnace hearth and side well (if so equipped) of the following materials: flux, dross, total aluminum scrap, UBCs, clean charge, and other than clean charge excluding UBCs;

G. A description of the method that Defendant shall use to ensure that the molten metal level in Furnaces 2 and 6 (as measured during fluxing), does not fall below the arch of the furnace;

H. Maximum feed/charge rates shall not exceed the rates established during the capture demonstration conducted pursuant to **Article One**, or the performance test conducted pursuant to **Article Five**, whichever is lower;

I. A procedure to take monthly measurements of the volumetric flow rate of gas at the Furnace 2 and Furnace 6 charge well hoods in accordance with EPA Methods 1 and 2 (40 C.F.R. Part 60, Appendix A). For Furnaces 2 and 6 charge well hoods, the gas volumetric flow rate measured during the monthly checks must be at least 95 percent of the average volumetric flow rate measured during the successful **Article One** capture demonstration. If the measured flow rate is less than 95 percent of the average volumetric flow rate measured during the successful **Article One** capture demonstration, Defendant shall modify or repair the capture equipment to achieve the required flow rate within one month from the date such measurement is taken, or shall cease charging the furnace in question. Defendant shall notify EPA, IDEM and HDEM, within two days, of the date when the flow rate was measured at less than 95 percent of the average volumetric flow rate measured during the successful **Article One** capture

demonstration, and

J. Designation of supervisor(s) who shall be responsible for ensuring compliance with this Consent Decree, Subpart RRR and the approved OM&M Plan in the following areas:

1. training personnel on the operation of the furnaces and the capture and collection system (including but not limited to the bag leak detection system and scrap weighing equipment);
2. training personnel on the recordkeeping requirements; and
3. on a weekly basis, reviewing records pertaining to the bag leak detection system and the scrap weighing to ensure that: the equipment is functioning and recordkeeping and corrective actions are occurring.

Article Eight- Independent Monitoring Contractor

A. In accordance with the procedure in the following Subsection B, Defendant shall hire an Independent Monitoring Contractor (“IMC”) to perform the duties in the following Subsection C. Defendant’s contract with the IMC shall require the IMC to perform all the duties in Subsection C, to provide quarterly reports to EPA and HDEM pursuant to Subsection D, and to be fully available to consult with EPA and HDEM upon request within a reasonable time and upon reasonable notice. Defendant shall bear all costs associated with the IMC, cooperate fully with the IMC, and provide the IMC with unfettered access to the Defendant’s Hammond facility, including all records and documents required pursuant to this Decree and 40 C.F.R. 63, Subpart RRR. The obligation to maintain a contract with the IMC shall continue until this Consent Decree terminates in accordance with Section XVIII (Termination).

B. Hiring Process. Within 30 days of the Effective Date, Defendant shall submit to EPA and HDEM a list of three or more proposed consultants to serve as the IMC along with their

qualifications and descriptions of any previous work or contracts with the Defendant. Each proposed consultant must employ two or more registered professional engineers:

1. experienced in the operation of fabric filter baghouses;
2. familiar with the operation of metal melting furnaces; and
3. certified to make visible emissions evaluations pursuant to EPA Method 9.

The proposed consultants shall not be present employees or contractors of the Defendant, or present employees of any contractor of the Defendant. Within 30 days of receiving the list of proposed consultants, EPA, after consultation with IDEM and HDEM, shall approve or disapprove each member of the list, which approval shall not be unreasonably withheld. Should EPA approve none of the proposed consultants on Defendant's initial list, Defendant shall be provided with one opportunity to revise and resubmit the list. Should EPA, after consultation with IDEM and HDEM, not approve any of the consultants on the revised list, EPA shall select a consulting firm and shall notify Defendant of the name of the firm that shall serve as the IMC. Within 30 days after receipt of EPA's approval, Defendant shall select one contractor from those contractors approved by EPA and shall enter into the contract described in **Article Eight, A**. In the event the contractor(s) approved by EPA are no longer available or willing to accept the work described in Subsection C when notified of their selection by Defendant, the Defendant shall select another contractor approved by EPA, after consultation with IDEM and HDEM, and shall enter into the contract described in **Article Eight, A**, within 30 days. If EPA disapproves of all of the proposed consultants on Defendant's list, the Defendant shall submit another list of proposed contractors to EPA within 30 days of receipt of EPA's written notice disapproving of the contractors on the previous list. If after Defendant has submitted a third list of contractors, which must be submitted within 30 days of receipt of written notice disapproving of all of the

contractors on Defendant's second list, the parties are unable to agree on an IMC, the parties agree to resolve the selection of the IMC through the dispute resolution process in Section XIV.

C. Duties of the Independent Monitoring Contractor. Defendant's contract with the Independent Monitoring Contractor shall provide that the IMC shall perform the following duties:

1. monitor operation of Defendant's furnaces, at a minimum, for forty hours per week, to determine compliance with 40 C.F.R. Part 63, Subpart RRR, this Decree, and Defendant's OM&M plan;
2. monitor Defendant's response to bag leak detection alarms;
3. monitor Defendant's weighing, characterization, and charging of scrap to the furnaces (including, but not limited to, monitoring to ensure that maximum charge rates are not exceeded);
4. review records relating to scrap weighing, bag leak detection alarms, and baghouse maintenance;
5. review, in advance of submission, reports submitted by the Defendant to EPA, IDEM and/or HDEM relating to 40 C.F.R. Part 63 Subpart RRR requirements or requirements of this Decree;
6. determine whether Furnaces 2 and/or 6 are operating with the level of molten metal between the hearth and the charge well below the arch;
7. on a weekly basis, periodically monitor for fugitive emissions from the Furnace 2 and Furnace 6 charge well hoods, and from the Furnace 2 and Furnace 6 hearth door, and flue hoods;
8. once every month observe the charge wells of Furnaces 2 and 6, over an

entire operating cycle (including during charging, fluxing and drossing operations) to determine whether any fugitive emissions occur;

9. ~~on a weekly basis,~~ **once every day in which the IMC is present at the Facility during daylight hours,** make and properly document visible emission evaluations of the baghouse stacks in accordance with EPA Method 9; and
10. submit quarterly reports to EPA and HDEM regarding items 1 through 9, above, and Defendant's compliance with the requirements of this Decree and 40 C.F.R. Part 63, Subpart RRR and the plans required therein.

Regarding hours of monitoring, the IMC shall be given access to Jupiter's SAPF at all times of the day and night, and the IMC shall monitor compliance, on an unannounced, rotating basis, during all shifts the furnaces are in operation.

D. Replacement Procedure. If the IMC becomes unable or unwilling to perform or complete the duties described in **Article Eight, C**, or for other good cause, Defendant and EPA shall confer in good faith regarding whether or not Defendant and EPA need to select a replacement IMC. If Defendant and EPA agree on the need to select a replacement IMC, Defendant and EPA shall select the replacement IMC in accordance with the selection procedures in **Article Eight, B**, above. If Defendant and EPA do not agree on the need to select a replacement IMC, either Defendant or EPA may invoke the dispute resolution procedures in Section XIV of the Decree. Replacement of the IMC may constitute a *force majeure* event pursuant to Section XIII of this Decree.

E. Quarterly Reports. Once Defendant has retained the IMC pursuant to **Article Eight, B**, the IMC shall provide certified Quarterly Reports to EPA and HDEM in accordance

with the requirements of this Paragraph. The first Quarterly Report shall be due within 90 days of the close of the calendar year quarter after EPA has approved the IMC pursuant to **Article Eight, B**, of this Decree with subsequent reports due within 90 days of the close of each calendar year quarter thereafter. Each Quarterly Report shall include:

1. copies of any visible emissions evaluations for which a six-minute average opacity exceeded 20 percent for a stack emission or 10 percent for a building emission;
2. dates and times when Defendant failed to initiate corrective action within 1-hour of a bag leak detection alarm or failed to complete the corrective action procedures in accordance with the approved OM&M Plan;
3. dates, times, and descriptions of deviations when Defendant operated the furnaces or baghouses in a manner inconsistent with the approved OM&M plan;
4. dates, times, and descriptions of any other deviations from the requirements of this Decree or 40 C.F.R. Part 63, Subpart RRR; and
5. description of any errors noted in the reports, required pursuant to this Decree or 40 C.F.R. Part 63, Subpart RR, submitted by the Defendant to the EPA or HDEM.

F. None of the Parties shall be bound by the statements, conclusions or opinions of the IMC. However, if Defendant violates any requirement of the Decree, Defendant shall be liable for stipulated penalties, unless excused by *force majeure*, pursuant to Section XIII, regardless of the statements, conclusions or opinions of the IMC.

Article Nine- Root Cause Analysis Report and Corrective Action Following a Visible Emission Observation

A. Root Cause Analysis Report Any time Defendant observes (or a Plaintiff or the IMC observes and notifies Defendant of) a visible emission from a furnace, charge well, dross door or hood, Defendant shall perform a “root cause analysis” and submit a report, which includes the following:

1. the date, start time, and end time, that the visible emissions were observed;
2. the name and title of the person(s) who made the observation(s);
3. the exact location(s) from which the emission originated;
4. the step taken, if any, that Defendant took to limit the duration and/or the quantity of the visible emission;
5. a detailed analysis of the “root cause” or “root causes,” of the occurrence, to the extent determinable; if the “root cause(s)” cannot be determined, an explanation shall be provided of what steps Defendant took to identify the “root cause(s)” :
6. an analysis of the measures, if any that are available to reduce the likelihood of an occurrence of another Visible Emission from the same or a similar “root cause” or “root causes.” This analysis shall discuss the alternatives, if any, that are available, the probable effectiveness and cost of the alternatives, and whether an outside consultant should be retained to assist in the analysis. Possible design, operational, and maintenance changes shall be evaluated; and
7. Defendant’s recommendation on what corrective action(s) should be taken, and a schedule for completion of such corrective action(s).

B. Corrective Action

In response to a Visible Emission Observation Defendant, as expeditiously as practicable, shall take such interim and/or long-term corrective actions as are reasonable and consistent with good engineering practices to minimize the likelihood of recurrence of the “root cause(s)” of the

Visible Emission Observation. EPA and HDEM reserve the right to require additional corrective actions to be taken, if either or both determine that the corrective actions taken have been insufficient.

Article ~~Ten~~ ~~Nine~~- General Provisions Relating to the Remedial Measures Program

A. Permits: Where any compliance obligation (including installation or construction of pollution control technology or equipment) under this Section (Remedial Measures) requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, including, but not limited to, any necessary air, water and hazardous waste construction and operating permits, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals, including without limitation, submitting to the federal, state and/or local permitting authority all relevant and available information requested by such agency after its receipt of the permit application. Any failure by Defendant to submit timely permit applications shall bar any use of Section IX (Force Majeure] of this Consent Decree, where a force majeure claim is based on permitting delays. EPA Region 5 and the State Parties shall use best efforts to review expeditiously all permit applications submitted to meet the requirements of this Consent Decree.

B. Mechanism for Incorporation in a Title V Permit

The Parties agree that the incorporation of the requirements of this Consent Decree into a Title V permit shall be in accordance with the State of Indiana's Title V rules, including

applicable administrative amendment provisions of such rules. Defendant shall provide EPA and the State Parties a copy of each application for a federally enforceable permit necessary to implement the requirements of this Consent Decree, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity.

C. Emission Credit Generation

Defendant will neither generate nor use any emission reductions resulting from any projects required pursuant to this Consent Decree for the purpose of obtaining netting credits or offsets in any Prevention of Significant Deterioration (PSD), major non-attainment (meaning the non-attainment area New Source Review (NSR) program within the meaning of Part D of Subchapter I of the Act, 42 U.S.C. §§ 7510-7515, 40 C.F.R. Part 51), and/or minor NSR permit or permit proceeding; provided, however, that notwithstanding any other provision herein, (a) nothing in this Paragraph shall be construed to limit the generation and use of emissions credits or offsets respecting emission reductions that are either more stringent than the emissions limits established under the Consent Decree or achieved from sources not covered under the Consent Decree, as well as reductions of any other pollutant at any source; and (b) this Consent Decree is not intended to prohibit Defendant or the States in which the Facilities are located from using emission reductions from the installation of controls required by this Consent Decree in determining whether a project that includes both the installation of controls under this Consent Decree and other construction or modification (whether or not such construction or modification affects the Facility's production capacity), and is permitted as a single or phased construction project, triggers PSD and/or NSR requirements.

D. Approval of Deliverables. After review of any plan, report, or other item that is

required to be submitted pursuant to this Consent Decree, EPA, after consultation with the State Parties, shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

1. If the submission is approved, Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved.

2. If the submission is conditionally approved or approved only in part, Defendant shall, upon written direction from EPA, after consultation with the State Parties, take all actions required by the approved plan, report, or other item that EPA after consultation with the State Parties determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section X. of this Decree (Dispute Resolution).

3. Any stipulated penalties applicable to the original submission, as provided in Section VIII. of this Decree, shall accrue during the 30 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

4. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA after consultation with the State Parties, may again require Defendant to correct any deficiencies, in accordance with the preceding

subsections, subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding subsections.

VI. CIVIL PENALTY

10. Defendant shall pay \$_____ (_____ dollars) as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961. Within 30 days after the effective date of this Consent Decree, payment of ___% of the civil penalty (\$_____) shall be paid to the United States by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice in accordance with instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Indiana, Hammond Division. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States, et al. v. Jupiter Aluminum Corp., and shall reference the civil action number (C.A. No. 07-____) and DOJ case number DOJ case number 90-5-2-1-08734 to the United States in accordance with Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
36 Martin Luther King Drive
Cincinnati, Ohio 45268

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal, state and/or local income tax.

12. Within 30 days after the effective date of this Consent Decree, Defendant shall

pay the balance of the civil penalty (\$_____) to the City of Hammond. Civil and stipulated penalties owed to the City of Hammond are payable by check to the Hammond City Controller. Checks shall include the Case Number of this Action and shall be mailed to Hammond Department of Environmental Management, 5925 Calumet Avenue, Room 304, Hammond, IN 46320.

VII. REPORTING REQUIREMENTS

13. Within 30 days after the end of each quarter calendar year (i.e., by January 30th, April 30th, July 30th, October 30th) after the Effective Date, until termination of this Decree pursuant to Section XVIII, Defendant shall submit a quarterly report for the preceding three months that shall include:

- a. The status of any construction or compliance measures necessary to correct any problems encountered or anticipated, together with implemented or proposed solutions;
- b. Problems encountered or anticipated, together with implemented or proposed solutions;
- c. Status of permit applications;
- d. A summary of Defendant's compliance status with emission limitations;
- e. A report of any excess emissions observed during the quarter, including but not limited to Method 9 observations made of stacks and observations made of fugitive emissions from Group 1, Group 2 and/or dross only furnaces: and
- f. For the fugitive emissions observed, a table or summary of the total number of Visible Emission Observations that occurred per furnace, the total number of such observations that were in excess of 30 seconds; the dates, start times and ending times, the "root cause(s)"

identified, the corrective actions taken, if any, for each such observation, and for those observations for which corrective actions are ongoing, a date in which completion of the corrective action is anticipated.

The first quarterly report shall be submitted by the end of the month following the end of the first quarter calendar year after the Effective Date;

14. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree or any applicable permits, Defendant shall notify United States and the applicable State Party of such violation and its duration or anticipated likely duration, in writing, within 30 days of the day Defendant first becomes aware of the violation or potential violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section IX of this Consent Decree (“Force Majeure”).

15. Whenever any violation of this Consent Decree or any applicable permits or any other event affecting Defendant's performance under this Decree, or the performance of its secondary aluminum production facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA, IDEM and HDEM orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of, or should have known of, the violation or event. This procedure is in

addition to the requirements set forth in the preceding Paragraph.

16. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices).

17. Each report submitted by Defendant under this Section shall be signed by a plant manager, a corporate official responsible for environmental management and compliance, or a corporate official responsible for plant management of the Defendant, and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

18. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

19. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

20. If Defendant fails to pay the civil penalty required to be paid under Section V of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$___ per day for the first 30 days that the payment is late, and \$___ per day for each day thereafter that the payment is late. Late payment of the civil penalty shall be made in accordance with Section VI, Paragraphs 8 through 10, above. Each stipulated penalty due under this Paragraph shall be paid exclusively to the Party to whom Defendant failed to make timely payment of the civil penalty.

21. Stipulated Penalties shall be paid in accordance with Section VIII, Paragraph ___, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Section VI, Paragraphs 10 and 12, above.

22. Defendant shall be liable for Stipulated Penalties to the United States and HDEM for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure).

23. Operation of a Furnace at a Time Not Permitted Under this Consent Decree

Should Defendant operate any furnace at its Hammond SAPF at a time not permitted under the Remedial Measures Section (Section V) of this Consent Decree, **or should it operate any furnace with “Other Than Clean Charge” at a time not permitted under the Remedial Measures Section**, the following stipulated penalties shall accrue: **(Proposal: Statutory Max as a cap)**

Penalty Per Violating Furnace

Period of Noncompliance

~~\$20,000~~ **\$10,000**

First day of operation

~~\$40,000~~ **\$20,000**

Second day of operation

\$60,000 \$30,000	Third day of operation
\$80,000 \$40,000	Fourth day of operation
\$100,000 \$50,000	Fifth, and each subsequent day of operation.

24. Capture and Control Requirements: The following Stipulated Penalties shall accrue per day for each violation of a requirement identified in **Articles One, Two or Three**, of Section V, except that the violation of any requirement to cease operating a furnace which appears in these Articles, shall be governed by the preceding paragraph (Paragraph ____ 23):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$4,000 2,000	1st day through 14th day
\$8,000 4,000	15th day through 30th day
\$12,000 6,000	31st day and beyond

24A. Capture Efficiency Excursions: Stipulated penalties shall accrue in the event that visible emissions are observed in accordance with Article One, D, above:

Penalty Per Visible Emission Occurrence

\$2,000	For any second occurrence of 30 seconds or more in a 24 hour period;
\$4,000	For any fourth occurrence of 30 seconds or more in a seven day period.

Additionally, without any demand for a stipulated penalty, following either of the violations above, Defendants shall submit a plan to EPA and HDEM in accordance with the requirements, as set forth in Article One, C.3.b.

24.B. Failure to Perform a “Root Cause Analysis Report”

25. Feed/Charge Weight: The following stipulated penalties shall accrue per violation per day for each violation of the feed/charge weight requirements identified in **Article Four**, of

Section V, above:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$4,000 2,000	1st day through 14th day
\$8,000 4,000	15th day through 30th day
\$12,000 6,000	31st day and beyond
\$4,000	1st through 14th day
\$8,000	15th through 30th day
\$12,000	31st day and beyond

26. Performance Tests: The following stipulated penalties shall accrue per day, per furnace, for each violation of the performance testing requirements identified in **Article Five**, of Section V, except violation of the emission limitations contain in **Article Five, D**, of Section V:

<u>Penalty Per Furnace Per Day</u>	<u>Period of Noncompliance</u>
\$5,000 \$2,500	1st through 14th day
\$10,000 \$5,000	15th through 30th day
\$15,000 \$7,500	31st day and beyond

27. The following stipulated penalties shall accrue for each violation of an emission standard set for a pollutant under Subpart RRR, and as stated in **Article Five, D**, of Section V:

(Tony- To provide counterproposal on gradations of penalty)

<u>Penalty Per Furnace Per Pollutant</u>	<u>Percentage above Limitation</u>
\$10,000	0.01 – 10%
\$30,000 \$25,000	10.01 – 50%
\$75,000 \$50,000	50.01 – 100%
\$150,000 \$100,000	> 100%

28. Bag Leak Detection System: The following stipulated penalties shall accrue per day for each violation of the bag leak detection system requirements identified in **Article Six**, of Section V:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$4,000 2,000	1st day through 14th day
\$8,000 4,000	15th day through 30th day
\$12,000 6,000	31st day and beyond
\$4,000	1st through 14th day
\$8,000	15th through 30th day
\$12,000	31st day and beyond

29. OM&M Plan: The following stipulated penalties shall accrue per day for each violation of each OM&M plan requirements, identified in **Article Seven**, of Section V:

<u>Penalty Per Day for Each Requirement Omitted</u>	<u>Period of Noncompliance</u>
\$4,000 2,000	1st day through 14th day
\$8,000 4,000	15th day through 30th day
\$12,000 6,000	31st day and beyond
\$4,000	1st through 14th day
\$8,000	15th through 30th day
\$12,000	31st day and beyond

30. Permitting Requirements: The following Stipulated Penalties shall accrue per day for each violation of the permitting requirements identified in **Article Ten, A**, of Section V:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
--------------------------------------	--------------------------------

\$4,000 2,000	1st day through 14th day
\$8,000 4,000	15th day through 30th day
\$12,000 6,000	31st day and beyond

\$4,000	1st through 14th day
\$8,000	15th through 30th day
\$12,000	31st day and beyond

31. Reporting Requirements: The following Stipulated Penalties shall accrue per day for each violation of the reporting and notification requirements set out in Section V, and Section VII of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
--------------------------------------	--------------------------------

\$500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

32. Independent Monitoring Contractor: The following stipulated penalties shall accrue per day for each violation of the requirement set forth in **Article Ten** of Section V, to hire, employ and/or find a replacement for the Independent Monitoring Contractor who shall assist in implementing the requirements of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
--------------------------------------	--------------------------------

(Discuss tomorrow- concern about IMC)

\$2,000	1 st through 14 th day
\$4,000	15 th through 30 th day

\$8,000

31st day and beyond.

33. The following Stipulated Penalties shall accrue per violation per day for Defendant's failure to comply with any requirement of this Consent Decree not specifically referenced in Paragraphs 20- 32 above, including, but not limited to, failing to perform any obligation required by any work plan or schedule approved under this Decree, within the specified time schedules established by or approved under this Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond.

34. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. (Proposal: For purposes of interpreting this Section (Stipulated Penalties) penalties listed one day through another day, should be construed as consecutive days). Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' or HDEM's written demand. The United States and/or HDEM may seek Stipulated Penalties under this Section. Any stipulated penalties paid under this Section shall be paid 50 percent to the United States and 50 percent to HDEM regardless of which Party made the demand.

35. The United States, after consultation with IDEM and HDEM, and/or HDEM may, in the unreviewable exercise of their discretion, reduce or waive Stipulated Penalties otherwise due that sovereign under this Consent Decree. ~~The determination by one sovereign~~

~~not to seek Stipulated Penalties, or subsequently to waive or reduce the amount it seeks, shall not preclude the other sovereign from seeking the full amount of Stipulated Penalties owing to that sovereign.~~

36. Stipulated Penalties shall continue to accrue as provided in Paragraph 33, above, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA, after consultation with the State Parties, that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, at the rate specified in 28 U.S.C. § 1961, to the United States and/or HDEM within 30 days of the effective date of the agreement or the receipt of EPA's or the State Party's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, at the rate specified in 28 U.S.C. § 1961, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest at the rate specified in 28 U.S.C. § 1961, no later than 30 days after the administrative decision or judicial order, judgment or decree resolving the dispute becomes final and not subject to any further appeal.

37. Defendant shall pay stipulated penalties owing to the United States in accordance with Section VI of this Decree, or by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-08734 and United States Attorney's Office file number _____, and delivered to the office of the United States Attorney, Northern District of Indiana, Hammond Division, 5400 Federal Plaza, Hammond,

Indiana 46320, (219) 937-5500. Defendant shall pay Stipulated Penalties owing to HDEM in accordance with Section VI of this Decree.

38. No amount of the Stipulated Penalties to be paid by Defendant shall be used to reduce its federal or state tax obligations.

39. Defendant shall be liable for interest at the rate specified in 28 U.S.C. § 1961, accruing as of the date payment became due.

40. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States, IDEM or HDEM for Defendant's violation of this Consent Decree or applicable law

IX. FORCE MAJEURE

41. "Force majeure," for purposes of this Consent Decree, is defined as any event beyond the control of Defendant, of any entity controlled by Defendant, or Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA, IDEM and HDEM

within 48 hours of when Defendant first knew that the event might cause a delay. Within seven days thereafter, Defendant shall provide in writing to EPA, IDEM and HDEM an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing the delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to any endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

43. If EPA, after consultation with the State Parties, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligation(s) under this Consent Decree that is (are) affected by the force majeure event will be extended by EPA, after consultation with the State Parties, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

44. If EPA, after consultation with the State Parties, does not agree that the delay or

anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

45. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 41-42, above. If Defendant carries the burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

47. Informal Dispute Resolution. Any dispute subject to Dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,

then the position advanced by the United States, after consultation with the State Parties, shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

48. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

49. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

50. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

51. The United States shall respond to Defendant's motion within the time period

allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

52. Standard of Review

a. Disputes Concerning Matters Accorded Record Review.

Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 47 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 47, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

53. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph _____. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

54. The United States, the State Parties, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or a State Party in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and assess Defendant's compliance with this Consent Decree.

55. Until five years after the termination of this Consent Decree Defendant shall retain and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or a State Party, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

56. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States and the State Parties at least 90 Days prior to

the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or a State Party, Defendant shall deliver any such documents, records or other information to EPA or one of the State Parties. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privileged or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

57. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (CBI) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

58. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State Parties pursuant to applicable federal, or state or local laws, regulations, ordinances, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal, state or local laws, regulations, ordinances or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

59. This Consent Decree resolves all the civil claims of the United States and the

State Parties for the violations alleged in the Complaint, and in the Complaints in Intervention filed in this action through the Date of Lodging.

60. The United States and the State Parties reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph __58, above. This Consent Decree shall not be construed to limit the rights of the United States or the State Parties to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal, state or local laws, regulations, ordinances, or permit conditions, except as expressly specified in Paragraph __58. The United States and the State Parties further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

61. In any subsequent administrative or judicial proceeding initiated by the United States or a State Party for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or a State Party in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 58 of this Section.

62. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and

permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. Except as otherwise provided in this Consent Decree, the United States and the State Parties do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of federal, State, or local laws, regulations, or permits. The Parties agree that this Consent Decree represents diligent prosecution of the claims alleged in the Complaint.

63. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the State Parties against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

64. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

65. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State Parties shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by Defendant.

XIV. NOTICES

66. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed to the United States Department of Justice, EPA Headquarters, and the EPA Region and the State Parties as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08734

and

To EPA Headquarters:

U.S. Environmental Protection Agency Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mailcode _____
Washington D.C. 20460

Sara Dauk
U.S. Environmental Protection Agency
Region 5
Mail Code AE-17J
77 West Jackson Blvd.
Chicago, IL 60604
dauk.sara@usepa.gov

Cathy Martwick
U.S. Environmental Protection Agency
Region 5
Mail Code C-14J
77 West Jackson Blvd.
Chicago, IL 60604
martwick.cathy@usepa.gov

To the State of Indiana:

Lynne Sullivan
Senior Environmental Manager
Office of Enforcement/Air Section - Mail Code 60-02
Indiana Department of Environmental Management
100 N. Senate Avenue
Indianapolis, IN 46204-2251

Thomas Nyhan

Hammond Department of Environmental Management
Hammond City Hall, Room 304
5925 Calumet Avenue
Hammond, IN 46320
nyhant@gohammond.com

To Defendant:

Jupiter Aluminum Corp.
Officer
Address.

67. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

68. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

69. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

70. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

71. The terms of this Consent Decree, including an attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the

modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XVIII. TERMINATION

72. After Defendant has completed the requirements of Section V (Remedial Measures) of this Consent Decree, has thereafter maintained continuous compliance with 40 C.F.R. Part 63, Subpart RRR and this Consent Decree for a period of twelve months, and has complied with all other requirements of this Consent Decree, including but not limited to paying the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States and the State Parties a Request for termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

73. Following receipt by the United States and the State Parties of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree.

74. If the United States, after consultation with the State Parties, agrees that the Decree may be terminated, the United States and the Defendant shall submit, for the Court's approval, a joint stipulation terminating the Decree.

75. If the United States, after consultation with the State Parties, does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph ___ of Section X, until 90 days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

76. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

77. Each undersigned representative of Defendant and other parties to the Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

78. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

79. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Further, the Defendant shall not need to answer the United States' Complaint or the State Parties' Complaint in Intervention unless and until the United States withdraws its consent to this Decree, or the Court declines to

enter it, in which case Defendant shall have an additional twenty days from that date to answer.

XXI. INTEGRATION

80. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIV. FINAL JUDGMENT

81. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court in this action as to the United States, the State Parties, and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXV. APPENDICES

82. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is _____

Dated and entered this ____ day of _____, 2007.

UNITED STATES DISTRICT JUDGE
Northern District of Indiana

FOR PLAINTIFF UNITED STATES OF AMERICA:

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Jupiter Aluminum Corp., (N.D. Ind.), relating to alleged violations of the Clean Air Act:

FOR PLAINTIFF UNITED STATES OF AMERICA:

RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

LISA A. CHERUP
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
Post Office Box 7611
Washington, D.C. 20044
(202) 514-2802
(202) 616-6584 (FAX)

JOSEPH S. VAN BOKKELEN
United States Attorney Northern District of
Indiana

SHARON JOHNSON
Assistant United States Attorney
5400 Federal Plaza, Suite 1500
Hammond, Indiana 46320
219-937-5681
219-852-2770(FAX)

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Jupiter Aluminum Corp., (N.D. Ind.), relating to alleged violations of the Clean Air Act:

MARY A. GADE
Regional Administrator
U.S. Environmental Protection Agency
Region 5

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Jupiter Aluminum Corp., (N.D. Ind.), relating to alleged violations of the Clean Air Act:

GRANT Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance
Assurance

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Jupiter Aluminum Corp., (N.D. Ind.), relating to alleged violations of the Clean Air Act:

RONALD L. NOVAK

Chief

Department of Environmental Management

City of Hammond, Indiana

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Jupiter Aluminum Corp., (N.D. Ind.), relating to alleged violations of the Clean Air Act:

THOMAS G. EASTERLY
Commissioner
Indiana Department of Environmental
Management
Indianapolis, Indiana

CHARLES J. TODD
Chief Operating Officer
Office of the Indiana Attorney General

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Jupiter Aluminum Corp., (N.D. Ind.), relating to alleged violations of the Clean Air Act:

FOR DEFENDANT JUPITER
ALUMINUM CORP.:

President, Jupiter Aluminum
Corp.

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Name

Name

APPENDIX A

The following upgrades to Jupiter's capture and collection systems are recommended to comply with the requirements of Subpart RRR:

1. Increase the hood size at the Furnace 2 & 6 charge wells from 13.88 x 9 ft. to 13.88 x 17.7 ft. with dross door and charge opening as described in Jupiter's 114 response dated 4/27/07.
2. Install an additional hood at dross door to capture emissions from door and dross pot which occur during drossing operations. The dross door hood shall be designed in accordance with chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice," 23rd edition as published by the American Conference of Governmental Industrial Hygienists.
3. If anything other than clean charge is added to the furnace hearth or the level of molten metal falls below the top of the passage between the sidewall and the hearth, install a hood at the furnace hearth door. The furnace hearth door hood shall be designed in accordance with chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice," 23rd edition as published by the American Conference of Governmental Industrial Hygienists.
4. Increase volumetric flow rate at the Furnace 2 & 6 charge well hoods from 43,900 actual cubic feet per minute (acfm) to 70,746 acfm or greater.
5. Increase volumetric flow rate at the Furnace 2 & 6 flue hoods to a level where no emissions are visibly escaping the hood. Install necessary lighting and observation platforms needed to make observations.

6. Obtain or modify control equipment so that a total volumetric flow rate of 70,746 acfm can be achieved at the Furnace 2 & 6 charge wells (plus required flows at the furnace dross door hood, furnace flue hood and furnace hearth door hood, if applicable) at a minimum air to cloth ratio of 4.73 to 1.
7. Restrict charge rates of UBCs and other dirty scrap to a level where no emissions are visibly escaping the charge well capture hoods.